IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SALES TAX REFERENCE No 14 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF SALES TAX

Versus

HEMCHAND MOTICHAND

Appearance:

1. SALES TAX REFERENCE No. 14 of 1994
MR SUDHIR MEHTA, AGP.for Applicant.
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 24/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1 At the instance of the revenue, the following question has been referred to this Court under the provisions of Section 69(1) of the Gujarat Sales Tax Act,1969, for its opinion :

"Whether on the facts and in the circumstances of this case, the Tribunal was right in law in holding that the ambit of Section 44 of the Gujarat Sales Tax,1969 was narrower than that of section 35 of the Bombay Sales Tax Act,1959, and the word 'assess' need not be assigned the meaning 'assessed to tax', in order to enable the Sales Tax authorities to initiate reassessment proceedings in the case where the deductions have been claimed and allowed and subsequently it was found that these deductions from the turnover of sales were not admissible on account of the fact that the purchasing dealers issuing certificates in Form 17 were not authorised to issue such forms in the absence of valid licence held by them ?"

2 Mr.Sudhir Mehta, learned Assistant Government Pleader has appeared for the applicant-revenue whereas none has appeared on behalf of the opponent-assessee though served. The learned Assistant Government Pleader has drawn our attention to the judgment delivered by this High Court in the case of State of Gujarat V/s. M/s.Laxman Anand & Co., in Sales Tax Reference No.10 of 1984 decided on 11.12.1992 and has submitted that the question which has been referred to this Court in the present case and the question which has been decided in the aforesaid decision is the same.

3 Looking to the law laid down by this Court in the aforesaid decision, we answer the question referred to this Court in the Negative i.e. in favour of the revenue and against the assessee.

4. The Reference stands disposed of accordingly with no order as to costs.

(A.R.Dave, J) (D.A.Mehta, J)

m.m.bhatt